

NO. _____

05-536 OCT 25 2005

In The OFFICE OF THE CLERK
Supreme Court of the United States

ARMANDO GONZALEZ and
MIRNA PADILLA GONZALEZ,

Petitioners,

v.

KOMATSU FORKLIFT, U.S.A., INC.,

Respondent,

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF
NEW JERSEY

PETTITION FOR WRIT OF CERTIORARI

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QUESTION FOR REVIEW

In this action, plaintiff Armando Gonzalez brought claims against, *inter alia*, the manufacturer of a forklift that caused a workplace injury.

Do regulations adopted pursuant to the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. § 651 *et seq.*, deprive an injured plaintiff of his common-law rights under state law, as against the manufacturer of an injurious product?

PARTIES TO PROCEEDING

The petitioners herein and appellants before the Supreme Court of New Jersey are Armando Gonzelez and his wife, Mirna Padilla Gonzalez.

The respondent herein and appellee before the Supreme Court of New Jersey is Komatsu Forklift, U.S.A., Incorporated. Komatsu manufactured the forklifts alleged to have caused Mr. Gonzalez' injury. Komatsu did not employ Mr. Gonzalez.

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STATEMENT OF JURISDICTION

The judgment as to which review is sought was entered by the Supreme Court of New Jersey on August 27, 2005. This Petition is filed within 90 days after that decision, pursuant to Supreme Court Rule 13. The jurisdiction of this Court is respectfully invoked under 28 U.S.C. § 1257.

STATUTES AND REGULATIONS INVOLVED

29 U.S.C. § 651(b)

The Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources--

(1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(2) by providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;

(3) by authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce, and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under this chapter;

(4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

(5) by providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods,